Melampy Manufacturing Company, Inc. *and* United Steelworkers of America, AFL–CIO–CLC, Petitioner. Case 6–RC–10374

July 23, 1991

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered an objection[1] to an election held February 6, 1990, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 14 for and 24 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations, as modified, and finds that the election must be set aside and a new election held.

We adopt the hearing officer's recommendation to sustain the Petitioner's objection pertaining to the Employer's conducting a written quiz asking employees to sign their names and offering a prize to the winner, shortly before the election was held on February 6, 1990.[2]

On January 31, Employer Operations Manager McCurry distributed to employees a letter from Employer President Melampy, expressing his concerns whether employees had been paying attention to his earlier letters concerning the union campaign. The letter requested the employees to enter a contest, on a voluntary basis, consisting of 20 questions requiring true or false answers (attached to the letter), and mostly derived from the Employer's earlier campaign letters. The letter informed the employees that to answer a few of the questions, they would need to have asked ''the Union salesman and his supporters certain questions.'' The letter also stated that there would be a small prize for the employee with the most right answers, and instructed the employees to sign their names on the questionnaire. Neither McCurry nor the employees were told what the prize would be.

On the next day, Melampy looked at the 18 returned tests, and saw that most of the employees who had turned in the tests had answered most of the questions to his satisfaction. Melampy testified that he did not notice any specific signatures, and did not compile a list of the contestants. He also testified, however, that he was interested ''in seeing the people that had been paying attention [to the campaign literature] and taking time to look at the test.''

On February 2, Melampy told the employees that everybody had done a good job on the test, and that all were eligible for the prize, pizza. Pizza was then provided free to all employees at lunch.

Relying on *National Gypsum Co.*, 280 NLRB 1003 (1986), and *Houston Chronicle Publishing Co.*, 293 NLRB 332 (1989), the hearing officer found that the contest constituted objectionable conduct. We agree.

As the Board held in *National Gypsum* and *Houston Chronicle*, the objectionable aspect of preelection contests like this one lies in instructing the employees to sign their names to the tests. This not only informs the Employer which employees participated and which had been familiar with its campaign material, it enables the Employer to know where additional campaign efforts should be focused and affords ''the potential for directing pressure at particular employees.'' *National Gypsum*, supra. In addition, the Employer here included questions which it advised the employees would require asking the union ''salesman'' for the answers. A correct answer thus could indicate which employees were in contact with union organizers and supporters—a form of indirect interrogation concerning union activity.

That the contest was voluntary and the prize insignificant, factors relied on by our dissenting colleague to find the conduct unobjectionable is not controlling here. The first, for reasons discussed above, as to the ''small'' prize, the prize itself was unknown to the employees until after the contest. It is therefore reasonable to infer that the chance to win a prize induced the employees to enter the contest and to sign their names to the test.

For the foregoing reasons, we find that the contest tended to interfere with employee free choice in the election. That is enough. We therefore sustain the objection and set the election aside.

[Direction of Second Election omitted from publication.]

MEMBER DEVANEY, dissenting.

I disagree with my colleagues' decision to adopt the hearing officer's recommendation to sustain the Petitioner's objection. The Employer's contest was voluntary and did not require employees to disclose their own personal views on the union campaign. The contest specifically promised only a ''small prize'' for the employee with the most right answers. The prize, awarded a few days before the election, turned out to be pizza at lunch for all employees. Under all the circumstances here, I would find that the Employer's conduct did not rise to the level of objectionable conduct and, therefore, I would certify the results of the election.

[1] The Petitioner withdrew its other objections before the hearing.

[2] All dates are 1990.